



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022-0009]

Rescission: Equitable Economic Recovery and Workforce Development Through Construction Hiring Pilot Program

AGENCY: Federal Transit Administration, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: As a result of a provision in the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, that authorizes a recipient or subrecipient of a grant provided under title 23 or 49, United States Code, to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant subject to applicable State and local laws, FTA is rescinding the Equitable Economic Recovery and Workforce Development Through Construction Hiring Pilot Program (Pilot Program).

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background: On May 21, 2021, FTA announced an initiative to permit FTA recipients and subrecipients to utilize geographic, economic, or other hiring preferences on FTA-funded construction projects. (86 FR 27672). The initiative was carried out as a pilot program for a period of four years and the purpose of the program was to provide flexibility to utilize hiring preferences to promote equitable creation of employment opportunities and workforce development activities, particularly for economically or socially disadvantaged workers, while

evaluating the impact of such preferences on full and open competition and project delivery. This initiative implemented Section 199B of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), a provision that has been included in prior Appropriations Acts since Fiscal Year (FY) 2016 that authorizes the Secretary to permit States and local governments to implement geographic, economic, or other hiring preferences not otherwise authorized by law, subject to certain mandatory certifications that the recipient must make. Through this Pilot Program, FTA also intended to exercise flexibility recently granted to Federal agencies by the Office of Management and Budget (OMB) to support recipients and subrecipients in achieving equitable economic recovery from the COVID-19 pandemic. Additionally, the pilot program advanced Executive Order 13985, “Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” issued on January 20, 2021, by supporting workers in overcoming barriers to obtaining successful, long-term careers in the transit construction industry.

Reason for Recission:

Section 25019 of the Bipartisan Infrastructure Law (Section 25019), enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58), authorizes recipients or subrecipients of Federal funds under title 23 or 49, United States Code, to implement certain hiring preferences related to the use of labor for construction projects. Specifically, Section 25019 provides that a “recipient or subrecipient of a grant provided by the Secretary under title 23 or 49, United States Code, may implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant, including prehire agreements, subject to any applicable State and local laws, policies, and procedures.” In addition, this provision specifically states that the use of such preferences “shall not be considered to unduly limit competition.” Therefore, FTA will not engage in or have a role in evaluating the effects on competition, if any, of labor or hiring preferences expressly authorized by Section 25019.

FTA has determined that because Section 25019 provides an express authorization for FTA recipients and subrecipients to utilize a local or other geographical or economic hiring preference relating to the use of labor for the construction of a project funded under title 49, United States Code, FTA recipients and subrecipients no longer must request approval from FTA through the Pilot Program to utilize such preferences. Additionally, the certification requirements of Section 199B of the Consolidated Appropriations Act, 2021 do not apply to hiring preferences authorized by Section 25019 because such requirements only apply to hiring preferences “not otherwise authorized by law.”

FTA has determined there are no hiring preferences eligible for FTA approval under the Pilot Program that are not authorized by Section 25019, and so such preferences going forward are subject to Section 25019, not Section 199B of the Consolidated Appropriations Act, 2021 . Accordingly, FTA has concluded that the Pilot Program no longer is necessary, and hereby rescinds it.

Nuria I. Fernandez,

Administrator.

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